Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

THE BANKRUPTCY ESTATE OF ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., JOSEPH A. UNANUE,
FRANK UNANUE, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey

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PETITION FOR A WRIT OF CERTIORARI

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February 1, 1999

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QUESTIONS PRESENTED

1. Whether the supremacy clause requires the application of 48 U.S.C. § 733a to a resident of Puerto Rico, thus establishing his or her legal status as a citizen of Puerto Rico?

2. Is New Jersey obligated, by the full faith and credit clause of the United States Constitution, to give effect to the Civil Code of Puerto Rico as it relates to its laws of forced inheritance, conjugal partnership and illicit contracts?

3. Whether the courts below violated the due process clause of the fifth or fourteenth amendment when they entered judgment against petitioner declaring that Charles Unanue had no right to inherit from his mother's estate, despite the fact that petitioner's claim had never been pleaded or been subject to discovery?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Petitioner the bankruptcy estate of Ulpiano Unanue-Casal, a/k/a Charles Unanue * and Respondents Goya Foods, Inc., Joseph A. Unanue and Frank Unanue, Trustees under the Trust Agreement dated November 16, 1970, as amended by and among Prudencio Unanue, Joseph Unanue and Anthony Unanue, as Trustees of Sixteen Trusts Thereunder, and the beneficiaries of said trusts, Carol Ann Unanue-Freeboarg, C. Jeffrey Unanue, Robert Unanue, Mary Ellen Yorio, C. Randall Unanue, Joseph F. Unanue, Thomas Unanue, Mary Carmen Norris, Mary Ann Unanue, Mary Louise Unanue, Theresa Elizabeth Devir. Francisco R. Unanue, Mary Isabel Unanue, Carlos A. Unanue, Anne Marie Unanue, Peter Unanue, Andrew Unanue and Jorge Unanue.

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* This petition is filed for review of the decisions and judgments entered against the bankruptcy estate of Charles Unanue. Charles Unanue will file a separate petition for review of the duplicate judgment entered against him individually while under the protection of the Bankruptcy Code.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New Jersey issued on November 5, 1998 and the decisions below.

OPINIONS BELOW

The judgment of the Supreme Court of the State of New Jersey entered on November 5, 1998, denying Petitioner's petition for certiorari has not been reported and is reprinted in the appendix hereto, p. 1a, *infra*. The

order of the Appellate Division, New Jersey Superior Court, denying Petitioner's petition for rehearing entered on July 16, 1998 has not been reported and is reprinted in the appendix hereto, p. 13a, *infra.*

The opinion and judgment of the Appellate Division filed on May 19, 1998 is reported at 311 N.J. Super. 589 (App. Div. 1998), and is reprinted in its original form in the appendix hereto, p. 3a, *infra.*

The opinion of the Chancery Division of the New Jersey Superior Court entered on November 19, 1993 is reprinted in the appendix hereto at p. 128a. The Order of the Chancery Division, dated November 19, 1994, is reprinted in the appendix hereto at p. 178a. The Opinion of the Chancery Division, dated March 28, 1994, is reprinted in the appendix hereto at p. 181a. The Opinion of the Chancery Division, dated February 23, 1995, is reprinted in the appendix hereto at p. 200a. The Judgment And Reference to Special Master of the Chancery Division, is reprinted in the appendix hereto at p. 214a. The Final Judgment of the Chancery Division, dated February 23, 1995, is reprinted in the appendix hereto at p. 211a.

An abridged version of the opinion and order of the Honorable Martin L. Kole, New Jersey Superior Court, entered on December 4, 1991 is reported at 255 N.J. Super. 362 (Law Div. 191), and a complete version is reprinted in the appendix hereto, p. 14a, *infra.* The Order of Judge Kole, dated December 4, 1991, is reprinted in the appendix hereto at p. 222a.

JURISDICTION

On appeal, Petitioner asserted at pages 47 through 52 of its principal brief in appeal number A-3915-94T3 that the Supremacy Clause of the United States Constitution and 48 U.S.C. § 733a required that the court below deem Prudencio Unanue to be a citizen of Puerto Rico at the time of his death so as to bind him and his estate to the

laws of Puerto Rico governing inheritance. It further asserted at pages 53 through 67 of the same brief that it was entitled to be fairly apprised of the claims and issues to be tried and it was denied this right with respect to the trial court's rendition of judgment regarding the estate of Carolina Unanue. These matters were further addressed and preserved in the reply brief at pages 51 through 55 and pages 55 through 71. The Appellate Division of the Superior Court of New Jersey affirmed the orders below "substantially for the reasons stated" by the judges below, and did not address the issue of the lower court's violation of the Supremacy Clause nor the issue of the denial of due process by rendering a decision with respect to the estate of Carolina.

On petition to the New Jersey Supreme Court, the issues of the Supremacy Clause and full faith and credit were presented at pages 3, 7, 8, 14 and 20 but the New Jersey Supreme Court declined to review.

The jurisdiction of this Court to review the opinion and judgment of the New Jersey Supreme Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

48 U.S.C. § 733a. Citizens; residence in island of citizens of United States.

> All citizens of the United States who have resided or who shall after March 4, 1927 reside in the island for one year shall be citizens of Puerto Rico.

U.S. Const. Article IV, Section 1.

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

U.S. Const. Article VI, Clause 2.

> The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every States shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. amendment V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a present or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offences to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amendment XIV, Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1738.

> The Acts of the legislatures of any State, Terrtiory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of that court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

In 1921, Prudencio Unanue ("Prudencio") and Carolina Casal ("Carolina"), both citizens of Spain, were married in Puerto Rico without a prenuptial agreement thus creating, under the laws of Puerto Rico and Spain, a legal partnership of gains and acquests known as a conjugal partnership. In 1936, Prudencio and Carolina founded an ethnic oriented wholesale food business in New York with funds provided by Carolina's inheritance. That family business eventually evolved into Goya Foods, Inc. ("Goya") and its affiliated companies (Goya and its affiliates are referred to collectively as the "Goya Companies").

Prudencio and Carolina's oldest son, Charles Unanue ("Charles"), served as Goya's Chief Operating Officer from 1947 to 1969. Since mid-1969, Charles has been engaged in an epic, bitter and all encompassing dispute with his father and brothers arising out of Charles' exposure of a massive tax fraud scheme perpetrated by his brothers involving unreported Goya profits of approximately $3,000,000.[1] The dispute has been litigated in vari-

[1] His father and brothers also schemed to defraud Augusto Falero, Prudencio's incapacitated, illegitimate son, of his forced inheritance under the laws of Puerto Rico.

ous forums throughout the United States and Puerto Rico and, since 1987, has focused exclusively on Charles' claim to inherit his share of his parents' estates as well as his claims to a 24% ownership interest in the Goya Companies that the Civil Code of Puerto Rico has been consistently ignored by New Jersey's state courts despite its applicability to the disputes between the parties. These claims are currently valued by Charles to be in excess of $300,000,000.

Prior to 1969, Charles, his father and his brothers were the shareholders, officers and directors of Goya and Charles and his brothers were the shareholders, officers and directors or partners of the Goya affiliated companies. However, in June 1969, after Charles' public disclosure of his brothers' tax fraud scheme, his father and brothers voted to discharge him as an officer, director and employee of the Goya Companies. Thereafter, extensive litigation ensued.

As a result of Charles' disclosure, Goya paid federal income taxes, interest and fraud penalties on approximately $825,000 of unreported profits. The litigation was settled by an agreement dated June 9, 1972 ("1972 Agreement") between Charles and the Goya Companies. The 1972 Agreement was executed and performed in Puerto Rico. Pursuant to its terms, Charles' ownership of approximately 24% of the Goya Companies was to be sold in an initial public offering to take place within two years. Charles retained the right to buy up to 75% of the offering at a maximum of 75% of $4,500,000.

In 1973, Charles learned that the Goya Companies and his brothers breached the 1972 Agreement by canceling the 1,250 non-voting shares of Goya owned by Caribbean Canneries, Inc., a Goya affiliated company, which substantially reduced his potential revenue from the public offering. As a result, Charles served a notice of default and Goya filed suit in New York for a judgment declaring that no default had taken place.

The declaratory judgment action was settled by the execution of an amendment to the 1972 Agreement dated

July 31, 1974 ("1974 Amendment") between Charles and the Goya Companies. It was executed and performed in Puerto Rico. Neither Prudencio nor Carolina were parties to the 1974 Amendment.

Pursuant to the 1974 Amendment, Charles agreed to: (1) the cancellation of the 1,250 non-voting shares of Goya; (2) the cancellation of the public offering; (3) a waiver of his future inheritance from his father; (4) restrictions on any interest in the Goya Companies he might obtain or inherit in the future from others; and (5) a penalty clause of twice the attorneys fees and costs to be paid by any signatory of the 1974 Amendment that loses an action against any other signatory on any matter ("Penalty Clause").

Prudencio died in 1976. During the last five years and four months of his life, he resided in and did not leave Puerto Rico. As a consequence, under 48 U.S.C. § 733a, Prudencio was a citizen of Puerto Rico, bound by its Civil Code, including the laws of forced heirship and those governing conjugal partnerships. Charles estimates that the value of Prudencio's estate prior to his death, which included the fair market value of an undivided one-half interest in voting control of Goya, was in excess of $100,000,000. Control of Goya constituted effective control of all of the Goya affiliated companies. The executors of his father's estate were Respondents Joseph A. Unanue and Frank Unanue, Charles' then surviving brothers. They reported their father's estate for federal and state tax purposes to be valued at approximately $1,350,000.

Carolina died in 1984, after an uninterrupted residence in Puerto Rico of 13 years. As a result, Carolina was also a citizen of Puerto Rico by virtue of 48 U.S.C. § 733a. Upon her death, Charles inherited one fourth of her estate pursuant to the express terms of her will. Her estate included an undivided one-half interest in the fair market value of voting control of Goya. Charles estimates that the value of his mother's estate at her death was more

than $200,000,000. Her executors, Respondents Joseph A. Unanue and Frank Unanue, reported her estate for federal and state tax purposes to be approximately $30,000. Charles never received his distribution from the executors.

Upon the marriage of Charles' parents, Prudencio and Carolina, a *sui geneis* legal partnership of gains and acquests known as a conjugal partnership was created under the laws of Puerto Rico and Spain. The conjugal partnership continued in existence throughout their marriage and, under the Civil Code of Puerto Rico, owned all of the assets earned or acquired during the marriage, irrespective of the location of the assets or the spouses or changes in their nationality. As such, upon Prudencio's passing, Carolina statutorily became the owner of one-half of the accumulated wealth of the conjugal partnership, including the fair market value of one-half of the majority of the voting stock of Goya. By statute, Charles was entitled to receive one-fifth of Prudencio's estate and was entitled to receive one-fourth of Carolina's estate upon her demise. It is the state court's refusal to recognize this legal fact and principle of Puerto Rico law that necessitates this petition.

In 1987, Charles discovered that his waiver of his right to inherit from his father's estate was void under the laws of Puerto Rico, the jurisdiction in which Charles was born and was a citizen from 1962 to 1997, in which the 1974 Amendment was executed and performed and of which his father was a citizen of by virtue of 48 U.S.C. § 733a. Accordingly, Charles served a demand upon his brothers for his fair and just share of both estates.

In response to Charles's demand, the executors commenced an action in New Jersey seeking a declaratory judgment that Charles was not entitled to inherit from his father. Shortly thereafter, Charles commenced an action in Puerto Rico seeking his inheritances from his parents and aunt, all of whom he contended died citizens in Puerto Rico by virtue of 48 U.S.C. § 733a.

In 1988, Charles filed a complaint in Puerto Rico contesting the validity of the 1972 Agreement as amended by the 1974 Amendment. Thereafter, Goya continued the jurisdictional war, after the Puerto Rico Superior Court had taken exclusive jurisdiction on the matter, by filing a complaint against Charles as an intervenor in the New Jersey action seeking a declaratory judgment that the agreements were valid. Goya sought such a declaration in New Jersey despite the fact that under the Civil Code of Puerto Rico, the agreement was void *ab intio*.

On August 29, 1990, Charles filed a voluntary petition for bankruptcy in the United States District Court for the District of Puerto Rico. On October 29, 1990, Goya and Goya de Puerto Rico, Inc., successor to Goya affiliates Puerto Rico Food Products Corporation and Caribbean Canneries, Inc., filed voluntarily proofs of claim in Charles's bankruptcy proceeding. The original proof of claim filed by Goya sought an "estimated" $4,000,000 for attorneys fees based upon the Penalty Clause. The original proof of claim filed by Goya de Puerto Rico, Inc. sought an "estimated" $2,000,000 for attorneys fees based upon the Penalty Clause as well. Their amended proofs of claim increased their "estimated" claims to $15,000,000 and $5,000,000, respectively.

Charles and the bankruptcy trustee objected to all of the proofs of claim on various grounds including the fact that the Penalty Clause upon which the claims were based was void as against the public policy of Puerto Rico and that the 1974 Amendment was void by its own specific reverse savings clause because it could not be substantially enforced.

On February 6, 1991, the bankruptcy court modified the automatic stay to permit the New Jersey court to conclude the plenary hearing to determine the domicile of Prudencio, but denied the motion by Respondents to lift the stay on the remaining aspects of the New Jersey action, which had not yet commenced. Immeditaely there-

after, the bankruptcy trustee was substiuted for Charles as the only party-defendant in the New Jersey action.

On September 24, 1991, the bankruptcy court consolidated the objection to the proofs of claim with a fraudulent transfer adversary proceeding and directed that Charles file the objection as a permissive counterclaim in that action. The counterclaim also reasserted Charles' claims to his inheritances and the invalidity of the 1974 Amendment.

On December 4, 1991, the New Jersey court issued an opinion concluding that Prudencio was domiciled in New Jersey notwithstaning 48 U.S.C. § 733a which provides that "[a]ll citizens of the United States who have resided [in Puerto Rico] for one year shall be citizens of Puerto Rico." The trial court concluded, without analysis or explanation, that this binding federal statute had no "relevance" to the case, despite Prudencio's unquestioned and uninterrupted freely chosen residence in Puerto Rico during the last five and one-third years of his life. The court's opinion addressed no other issue other than Prudencio's domicile.

Respondents responded to this decision by again asking the bankruptcy court to lift the automatic stay to permit the New Jersey action to proceed without submitting new evidence. On May 15, 1992, the motion was denied and, thereafter, the movants appealed to the district court. On August 3, 1993, the district court reversed.

Respondents then filed a summary judgment motion in the New Jersey action which sought to: (1) declare Charles in breach of the 1974 Amendment; (2) enforce the Penalty Clause in the 1974 Amendment which Goya had claimed, in the bankruptcy case, entitled it to $15,000,000, as being twice its legal expenditures made in litigation for the personal benefit of its controlling shareholders; (3) declare that Charles had no right to claim an interest in either Prudencio's or Carolina's estate; and (4) declare the 1972 Agreement and the 1974

Amendment valid and enforceable. Respondents sought these declarations even though Charles' claim to his mother's estate had not been filed in the New Jersey probate proceeding, where her executors had certified that she was domiciled in Puerto Rico, and no discovery had been conducted on the complicated factual issues underpinning Goya's effort to enforce the agreements.

The bankruptcy trustee, as predicted by the bankruptcy court judge as a ground to deny the vacating of the automatic stay, did not appear in opposition to the motion. Charles' application to the bankruptcy court to represent and defend the bankruptcy estate was denied. Therefore, no party appeared in the New Jersey action to defend the estate. Although the court and Respondents recognized that Charles was not a party, the court ordered Charles to participate in the proceedings and he did so until the court refused to confirm that, as a non-party, he could not be held liable for Respondents' legal fees.

The Honorable Arthur J. Lesemann, J.S.C., granted Respondents' summary judgment motion. He found Charles in breach of the 1974 Amendment and then modified and enforced the Penalty Clause entering $6.9 million judgments against both the bankruptcy estate and Charles, individually, despite having found that Charles' inheritance waiver, which was void as a renouncement of a future inheritance under Puerto Rico law, was the principal objective of the 1974 Amendment, and binding precedent establishing that the 1974 Amendment was "void" and "unenforceable" not only under the laws of Puerto Rico but also under the laws of New Jersey and New York. Equally remarkable, the court declared that Charles had no right to assert a claim to Carolina's estate under any theory because of his waiver of his inheritance from Prudencio. In so doing, it refused to recognize the Civil Code of Puerto Rico governing forced heirship and conjugal partnership and thus violated the full faith and credit clause of the United States Constitution, as well as the undisputed and unambiguous will of Carolina.

The bankruptcy case was dismissed by the bankruptcy court in September 1997 on the basis that it was a no asset case and that there were no creditors other than a non-dischargeable alimony claim, the effect of which was to deny recognition to the proofs of claim of Goya and Goya de Puerto Rico, Inc. and the $6.9 million judgments of the New Jersey court.

The Appellate Division affirmed the trial court decisions. It held that Prudencio's alleged New Jersey domicile mandated the application of New Jersey law to all issues arising in the case, including the validity of the 1972 Agreement and 1974 Amendment, even though Prudencio was not a party ot the 1974 Amendment. It also affirmed the reformation of the otherwise illegal Penalty Clause, contrary to every reported decision in New Jersey and New York, the chosen jurisdiction in the 1974 Amendment, to circumvent the binding family laws of Puerto Rico.

To deny Charles his bequest, the Appellate Division ignored the partnership laws of the Civil Code of Puerto Rico and, instead, applied conflicts of law principles arising in community property states.[2] Utilizing these inapposite standards, the court held that the date of acquisition of the questioned assets was the dispositive factor. In so doing, the court ignored the fundamental distinction between community property and partnership property, namely, the fact that conjugal partnership, as all legal

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2 By so doing, the Appellate Division failed to recognize that a conjugal partnership is, unlike a marriage consummated in a community jurisdiction, a separate legal entity whose public policy was the protection of the wife and, after 1976, is the protection of both spouses. In this regard, the civil law governing Conjugal Partnership when it was created in 1921 and until 1976, provided: "The wife shall obey her husband and follow him wherever he elects to live." (31 LPRA Sec. 283). Without equal ownership of the Conjugal Partnership assets, a homemaker has the status of an indentured servant.

partnerships, are separate judicial entities. As a partnership of gains, it is the owner of all assets acquired by its constituent members. To avoid this principle, the Appellate Division rendered the extraordinary opinion that New Jersey does not "recognize" the Civil Code of Puerto Rico which enacted the conjugal partnership system after being granted the authority to do so by the United States Congress in 1902. In other words, it refused to give full and faith and credit to the valid laws of Puerto Rico. Its decision is legally unprecedented.

REASONS FOR GRANTING THE WRIT

I. THE SUPREMACY CLAUSE AND THE FULL FAITH AND CREDIT CLAUSE OF THE CONSTITUTION PRECLUDE THE ENTRY OF THE JUDGMENT BELOW

The courts of New Jersey have disregarded two fundamental precepts of the Constitution, and in doing so they have encroached upon what Congress has carefully established with respect to the relations among Puerto Rico, the United States, and the 50 States. In disregarding those constitutional precepts, the decisions of the courts below decide important federal questions (*i.e.*, the effect of the Supremacy Clause and whether Full Faith and Credit is to be afforded to Acts of the government of the Commonwealth of Puerto Rico) in ways which conflict with the application of those principles by other courts which have had cause to address them. The decisions of the courts below also decide an important federal question (*i.e.*, the effect to be afforded Congress' statutory declaration of the establishment of Puerto Rican citizenship by residence in the island for a year or more) which has not been, but should be, addressed by this Court. For these reasons alone, the petition for a writ of certiorari should be granted. *See*, Supreme Court Rule 10.

Among other violations of the Constitution, the courts below have disregarded the Supremacy Clause. Article VI, Clause 2 provides:

> This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In the decisions below, the courts wholly disregarded a number of Laws of the United States which, if applied, would have required a different outcome. The foremost federal law which was contravened by the courts below is 48 U.S.C. § 733a.[3] That statute provides, unambiguously, in its entirety:

> All citizens of the United States who have resided or who shall after March 4, 1927, reside in the island for one year shall be citizens of Puerto Rico.

The facts necessary for the application of this statute exist beyond dispute. Prudencio became a naturalized U.S. citizen in 1946. After November 1970, he continuously resided in Puerto Rico without leaving for five years and four months. By operation of this federal statute, Prudencio became a citizen of Puerto Rico and was there-

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[3] 48 U.S.C. § 733a was enacted into law in 1927 on the recommendation of the Governor of Puerto Rico, its legislature and the Committee on Insular Affairs of the House of Representatives which, after the rejection of HR 11610 of April 26, 1926 requiring 3 years of "domicile" in Puerto Rico as the basis for Puerto Rican citizenship, favorably considered HR 11846 of May 5, 1926 making U.S. citizens citizens of Puerto Rico after one year of "residence"—irrespective of the settled concept of domicile which requires the intention to continue residing there for an indefinite period. The unambiguous language of the legislation, particularly in light of the clear awareness of Congress with respect to the use of "residence" rather than "domicile," cannot be disputed. H.R. 11846 was approved, and it amended the Organic Act of Puerto Rico by adding Section 5a. It was codified as 48 U.S.C. 733a.

after subject to its laws, the obligations and limitations arising from Puerto Rican citizenship, and the public policies of that Commonwealth. The legislative history of this 48 U.S.C. § 733a is clear in expressing the intent that *residence* in Puerto Rico, rather than being domiciled in Puerto Rico, for a year or more confers Puerto Rican citizenship. Compare, Chapter 503 of the Public Laws of the Sixty-ninth Congress, March 4, 1927 (". . . who have resided or who shall hereafter reside in island for one year or more") with H.R. 11610 of the Sixty-ninth Congress ("permanently domiciled in the island for 3 years").

The concept of citizenship incorporates the concept of domicile. *See, Rodriguez-Diaz v. Sierra-Martinez*, 853 F.2d 1027, 1029 (1st Cir. 1988); *Unanue v. Caribbean Canneries, Inc.*, 323 F. Supp. 63, 67 (D. Del. 1971); *Trustees of Princeton University v. Trust Co. of New Jersey*, 22 N.J. 587, 595, 127 A.2d 19 (1956). By virtue of the statutory designation of Prudencio as a citizen of Puerto Rico, 48 U.S.C. § 733a, Prudencio's domicile thereby became Puerto Rico [4] such that the Puerto Rican laws governing forced heirship [5] and conjugal part-

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[4] In the hierarchy of a person's relationship with a jurisdiction, mere residence in a locality is the lowest form of relationship—constituting a transient form of relationship which is readily changed by the simple expedient of the person relocating himself. The next higher relationship is that of domicile, a relationship that requires more permanence and which arises from an objective manifestation of intent to make one's abode in that jurisdiction for an indefinite period of time. The highest form of relationship is that of citizenship, which entails the establishment of reciprocal social and political rghts and obligations between the individual and the jurisdiction which may continue despite a change in the person's residence. It is this highest form of relationship which this statute created between Prudencio and Puerto Rico.

[5] Under the law of Puerto Rico, an agreement by an heir such as Charles to renounce or compromise a future inheritance is prohibited. See, 31 L.P.R.A. §§ 2362, 2370. Similarly, a parent is prohibited from disinheriting a natural child. 31 L.P.R.A. § 2367.

nerships [6] became applicable even under the "domicile theory" used by the courts below.[7]

Moreover, regardless of whether Prudencio was domiciled in Puerto Rico, Puerto Rico's laws relating to family rights and obligations, or to the status, condition and legal capacity of persons, are binding upon the *citizens* of Puerto Rico although they reside in a foreign country. 31 L.P.R.A. § 10. Hence, the real determniation of consequence in this matter is whether Prudencio became a citizen of Puerto Rico. Under 48 U.S.C. § 733a, he did. The courts below refused to recognize the supremacy of that federal statute.

Congress, in balancing the relations between the United States and the Commonwealth of Puerto Rico, has determined that by virtue of *residence* in Puerto Rico for a year or more (not by virtue of a change of domicile), a U.S. citizen such as Prudencio becomes a citizen of Puerto Rico. Congress has further determined, in its balancing of the relations between the United States and the Commonwealth of Puerto Rico, that the government of Puerto Rico shall have the authority to legislate with respect to all matters of a legislative nature which are not locally inapplicable. 48 U.S.C. § 821. The laws of Puerto Rico and the laws of Congress thus emanate from the same

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[6] Under Puerto Rican law, the assets of married persons are held by separate legal entity known as the conjugal partnership. 31 L.P.R.A. § 3641. See also, *Mercado-Vega v. Martinez*, 666 F. Supp. 3, 7 (D.P.R. 1986); *Fernandez-Cerra v. Commercial Life Insurance Co. of Newark*, 344 F. Supp. 314, 316 (D.P.R. 1972).

[7] The effect of Puerto Rico's laws regarding forced heirship and the conjugal partnership is to protect the interests of children of a Puerto Rican citizen (such as Augusto Falero, the natural son of Prudencio, and Charles, Prudencio's first born "legitimate" son) and the interests of the conjugal partnership (an entity created pursuant to 31 LPRA § 3551 on the day of Prudencio's marriage in Puerto Rico to Carolina and thereafter existing pursuant to that statute). These basic attributes of Puerto Rican citizenship, however, were abrogated by the courts below.

sovereignty. *People of Puerto Rico v. Shell Oil Company*, 302 U.S. 253, 264, 58 S.Ct. 167, 172, 82 L.Ed. 235 (1937).

In the context of the present matter, Puerto Rico's laws regarding forced heirship and the conjugal partnership do themselves emanate from the same sovereignty that gives rise to federal laws. The Puerto Rican statutes regarding forced heirship and the conjugal partnership, as well as Puerto Rico's statute making the laws regarding family obligations applicable to all of its citizens, are within the purview of the legislative power which Congress has conferred upon the Puerto Rican government. Thus, upon the duly enacted authority of Congress, residence in Puerto Rico alone for the requisite time confers Puerto Rican citizenship upon U.S. citizens, and such citizenship subjects and binds the individual and his estate to the laws of Puerto Rico regarding family rights and obligations.

Had the courts of New Jersey given supremacy to 48 U.S.C. § 733a and to Congress' delegation of its legislative authority to the government of Puerto Rico, the courts would have been required to conclude that Charles is entitled to an inheritance from Prudencio of one-fifth of his estate under the forced heirship laws of Puerto Rico (and, had the issue been before the courts below, that Charles became entitled to an inheritance from Carolina consisting of a one-fourth share of one-half the value of the property of the conjugal partnership of Prudencio and Carolina under the conjugal partnership laws and Carolina's will, as well as one-fourth of Carolina's other properties).

However, the courts below refused to recognize the supremacy of the federal law conferring Puerto Rican citizenship, and refused to recognize the supremacy of the results of the exercise of federal legislative power which Congress conferred upon the government of Puerto Rico. The consequenecs of such a refusal are significant. In 1902, Congress passed the Foraker Act which adopted

the Civil Code of Spain (the laws that had been in force for the government of Puerto Rico prior to the surrender of Spain in the Spanish American War of 1898) as the governing law of Puerto Rico as well as the Philippines. Congress also conferred on Puerto Rico a number of attributes akin to those possessed by states.[8] The relationship which Congress constructed between Puerto Rico and the United States is like no other relationship. *Examining Board of Engineers, Architects And Surveyors v. Flores De Otero*, 426 U.S. 572, 596, 96 S.Ct. 2264, 2278, 49 L.Ed.2d 65 (1975). While conferring only certain selected attributes that are similar to those possessed by states, and by adopting the Civil Code of Spain as the controlling body of civil law, it is apparent that the creation of a unique relationship with respect to Puerto Rico was intended by Congress. The decision of the courts below has wholly destroyed that carefully crafted status of Puerto Rico, and the full faith and credit that must be given in each State to the public acts, records and judicial proceedings and to the contracts and judicial entities created under its laws and reduced that relationship to one where Puerto Rico is not afforded the full faith and credit that is its due under Congress' determination that certain

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[8] While Puerto Rico is not technically a state, its status is most closely analogous to that of a state: it has a constitution of its own (48 U.S.C. §§ 731b-731e), its inhabitants and citizens constitute a body politic (48 U.S.C. § 733), the statutory laws of the United States which are not locally inapplicable extend to Puerto Rico (48 U.S.C. § 734), the rights, privileges and immunities of U.S. citizens shall be respected in Puerto Rico "to the same extent as though Puerto Rico were a State of the Union" (48 U.S.C. § 737), and review of decisions of the Supreme Court of the Commonwealth of Puerto Rico by the U.S. Supreme Court is available upon the same basis a review from the decisions of the highest court of a state (28 U.S.C. §§ 1257, 1258). Congress has conferred upon Puerto Rico many of the attributes of quasi sovereignty possessed by the states. *People of Puerto Rico v. Shell Oil Company*, 302 U.S. 253, 261-262, 58 S.Ct. 167, 171, 82 L.Ed. 235, 242 (1937).

principles of federalism shall apply to relations with Puerto Rico.

Article IV, Section 1 of the Constitution provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

In crafting the unique relationship that exists between Puerto Rico and the United States of America, Congress itself has also legislated on the effect that is to be given to the Acts of Puerto Rico. 28 U.S.C. § 1738 provides, in relevant part:

> The Acts of the legislatures of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> . . .
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

For purposes of this statute, Puerto Rico is to be treated as a state, territory or possession. *See, Americana of Puerto Rico, Inc. v. Kaplus*, 240 F. Supp. 854 (D.N.J. 1965), affirmed, 368 F.2d 431 (3rd Cir. 1966), cert. denied, 386 U.S. 943, 87 S.Ct. 977, 17 L.Ed.2d 874 (1967); *Torres v. Gardner*, 270 F. Supp. 1 (D.P.R. 1967). Other courts have relied upon the Full Faith and Credit clause of the Constitution to reach the same result. *See, Heritage Corp. of South Florida v. Rivas*, 289 So.2d 432 (Fla. App. 1974), cert. denied, 300 So.2d 901 (1974); *Hilton International Co. v. Arace*, 394 A.2d 739, 35 Conn. Supp. 522 (Conn. Super. App. 1977); *Gonzales Perez v. Romney Orchards, Inc.*, 399 S.E.2d 50,

184 W.Va. 20 (1990) (relying on the Full Faith and Credit Clause and 28 U.S.C. § 1738).

Regardless of whether the Full Faith and Credit Clause of the Constitution or whether Congressional enactment requires the courts of New Jersey to give effect to the laws of Puerto Rico to which Puerto Rico binds its citizens, it appears that the courts of New Jersey, and of New Jersey alone, are now on a course of refusing to give Full Faith and Credit to the Acts of Puerto Rico governing "family rights and obligaitons, or to the status, condition and legal capacity of persons" which have been determined by the Puerto Rican Legislature to "be binding upon the citizens of Puerto Rico, although they reside in a foreign country." Specifically, the laws of Puerto Rico relating to forced heirship and the conjugal partnership are now to be wholly disregarded by the New Jersey courts even in matters among citizens of Puerto Rico regardless of the clear enforceability and applicability of those laws in Puerto Rico. Indeed, in rejecting the existence of a claim arising from the conjugal partnership's ownership of assets, the Appellate Division simply pronounced that New Jersey does not "recognize" the legal entity (the conjugal partnership) that is created by Puerto Rican law (and Spanish civil law) with respect to spouses. Under the Constitution and Congressional enactment, the courts of New Jersey are not (and cannot be) permitted to set themselves up as a "super legislature" which can re-write the Acts of the Puerto Rican Legislature for the benefit of a disposition of assets being controlled by a deceased, former resident of New Jersey who, in an act prohibited by the laws of Puerto Rico (*See*, 31 LPRA §§ 3672, 3673) purported to create an *inter vivos* trust with respect to the disposition of property held by a conjugal partnership created and existing under the Laws of Puero Rico.

Regardless of the New Jersey courts' view with respect to the policies behind Puerto Rico's laws regarding the legal inability to disinherit one's heirs, the legal inability

of an heir to renounce or compromise his inheritance, and the ownership of all property which spouses acquire during marriage held by a separate legal entity (the conjugal partnership), those laws remain the principles which govern the legal rights and relations of the citizens of Puerto Rico.

Here, New Jersey has improperly and impermissibly intruded in the affairs of citizens and judicial entities of Puerto Rico, by, *inter alia*, disregarding the Puerto Rican laws of inheritance and by refusing to recognize and give full faith and credit to the settled laws of Puerto Rico which create and give legal recognition to the conjugal partnership. Conjugal partnerships are separate legal enties which hold title to all assets acquired by the spouses during their marriage, such title being to the exclusion of the individual spouses themselves. *See*, 31 L.P.R.A. § 3641. It can, and must, sue and be sued in its own name, and it is governed by the laws governing partnerships. *See*, *Mercado-Vega v. Martinez*, 666 F. Supp. 3, 4 n.3 (D.P.R. 1986); *Janer Vila v. Superior Court*, 90 P.R.R. 277, 295 (1964); *Carrasco v. Sec. of Health, Education and Welfare*, 628 F.2d 624, 630 (1st Cir. 1980). As a partnership, it has its own citizenship that is sepaarte and distinct from that of each of the spouses. *See*, *Fernandez-Cerra v. Commercial Ins. Co. of Newark*, 344 F. Supp. 314 (D.P.R. 1972). The conjugal partnership regime is distinct from, and significantly different from, a community property regime. *See*, *Fernandez-Cerra*, *supra*. The conjugal partnership thus becomes a fundamental feature of civil law marriages that are entered into in those jurisdictions.[9]

The courts below further failed to give full faith and credit to the laws governing the 1974 Amendment. Under Puerto Rican law, the contract's waiver of inheritance

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[9] Civil law jurisdictions include all of the countries of Central and South America, most of the Caribbean Islands and most of the countries of Europe.

rights and its penalty of twice the amount of attorneys' fees and costs for an unsuccessful contesting of any matter were illegal. *See*, 31 L.P.R.A. § 2370. The courts below did not give credit to that Puerto Rican law, even though the contract was one with a Puerto Rican citizen (Charles) who could not, as a matter of Puerto Rico law, waive his inheritance, was executed and performed in Puerto Rico, and included an express provision that if the contract could not be substantially enforced it would be cancelled and the parties returned to their prior positions. Assuming arguendo that the 1974 Amendment was "saved" from the invalidity arising from the purported inheritance waiver by way of the contract's reference to New York law, the courts below failed to give credit to New York's law rendering contractual penalties unenforceable. *See*, *e.g.*, *Jarro Building Industries Corp. v. Schwartz*, 281 N.Y.S.2d 420, 425 (N.Y. 2d Dep't 1967). Thus, in either event, the courts below failed to give the full faith and credit that was due to the governing law of a Commonwealth or a State, as the case may be.

The decisions below pose a threat to the principles of federalism that are set forth in the Constitution. It now signals a new course, where states are to be free to disregard federal legislation concerning such basic matters as the citizenship of those persons who reside in the lands that are under the authority of the United States. It now signals a new ability of states to disregard carefully devised laws governing the relationship between the United States and the Commonwealth of Puerto Rico. It now signals a new ability of states to refuse to give full faith and credit to Acts of other sovereigns to which they had heretofore been required to give full faith and credit.

The consequences of the decisions in this matter extend well beyond the many millions of dollars which are at stake. It extends beyond setting a precedent that will permit the impoverishment of legally protected persons by means of the misappropriation of the property of conjugal and other partnerships. The implications of this case, at

a very minimum, will affect millions of Hispanic persons in the United States and elsewhere who were married in jurisdictions where the conjugal partnership regime exists, and who may now be subjected by the decisions of state courts to marital property regimes that are foreign to their contractual agreements, experience and expectations. The decisions that have been made in this case impact even a much broader audience by affecting the very foundations of the relationship that Congress had created with the People of the Commonwealth of Puerto Rico and their rights as citizens of the United States. This case presents much more than just a dispute over notions of comity. Rather, with Congress having legislated with respect to both the issue of Puerto Rican citizenship and the effect to be given to the Acts of Puerto Rico, this case presents the more fundamental issue of the Supremacy of the Constitution and federal law. This Court should, therefore, grant certiorari.

II. THE DETERMINATION BY THE COURTS BELOW OF MATTERS WHICH WERE NOT PLACED IN ISSUE BEFORE IT, AND WHICH DETERMINATIONS WERE MADE WITHOUT FAIR NOTICE, CONSTITUTES A DENIAL OF DUE PROCESS

In this matter, the courts below entered and affirmed judgments with respect to matters which had not been pleaded, and without fair notice that judgment would be rendered on issues which had not been placed before it by the pleadings. In so doing, the courts below have come into conflict with a leading pronouncement by this Court of the principle of procedural due process. Such a conflict warrants the granting of certiorari under Supreme Court Rule 10(c).

Such occurred with respect to claims that Charles' bankruptcy estate had with respect to the estate of Charles' mother, Carolina. No pleading brought before the court the claims which Charles had against the estate of Carolina (both of whom were citizens and domiciliaries of

Puerto Rico at the time of her death, and which estate was not even a party before the court). Also, notwithstanding that the claims regarding the 1972 Agreement and the 1974 Amendment were pending before the Superior Court of Puerto Rico, that all but two of the parties to the contracts were not before the New Jersey court, that discovery in the New Jersey case had been limited to the issue of Prudencio's domicile, and that no competent proof was presented in support of a judgment against Charles' bankruptcy estate, the New Jersey court proceeded to enter a judgment of $6.9 million for attorneys' fees incurred on behalf of persons who were not even parties to the agreements.

Notwithstanding that Charles was expressly bequeathed one-fourth of Carolina's estate by will, the court, *on its own initiative*, undertook to enter a judgment declaring that Charles was not entitled to any inheritance from Carolina's estate without any jurisdiction over her estate, without any notice that it would even rule with respect to that estate, without any opportunity for discovery with respect thereto, and without due process.

"For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' " *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556, 569 (1972) (quoting from *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233, 17 L.Ed. 531, 534 (1864)).

The protections of the constitutional requirement of due process are applicable to citizens of Puerto Rico through the application of either the Due Process Clause of the Fifth Amendment or the Due Process Clause of the Fourteenth Amendment. *Examining Board of Engineers, Arhcitects And Surveyors v. Flores De Otero*, 426 U.S. 572, 600, 96 S.Ct. 2264, 2280, 49 L.Ed. 65 (1975).

The trial court below, in deciding matters without notice that it would undertake to decide matters which had not been brought before it by the parties, clearly denied procedural due process to Charles' bankruptcy estate. That estate, being entitled to the assets of Charles, was thus deprived of the due process it needed to establish and preserve its rights. It was also denied due process in that the New Jersey court would not permit discovery with respect the penalty provisions of the 1974 Amendment and proceeded to enter a judgment of millions of dollars even though no competent evidentiary proof was presented to the court. The court's haste to conclude disputes that were not even before it was no substitute for the notice to which Charles' bankruptcy estate was entitled under the due process clauses of the Constitution.

This denial of due process is particularly appropriate for the granting of certiorari. The court below impermissibly intruded in affairs which Congress has committed to the government of the Commonwealth of Puerto Rico. In this matter, the courts of the State of New Jersey have taken it upon themselves to purportedly adjudicate matters (i) between citizens of Puerto Rico (Charles' rights with respect to the estate of Carolina involves only citizens of Puerto Rico), (ii) involving persons who were not before the court, (iii) without the claims themselves having been before the court, and (iv) without notice to the Puerto Rican citizens involved.

These events are not mere minor procedural miscues by the courts below; but in fact are major denials of the most fundamental concepts of due process which affect significant substantive rights of citizens of the United States and of the Commonwealth of Puerto Rico. It would exceed anyone's sense of fairness and due process for a foreign jurisdiction to determine, without notice, the rights of U.S. citizens who are not before it and who thus have not submitted their claim to that court. It should no less exceed this Court's tolerance for a court of one of the states to do the same to citizens of another jurisdiction;

especially to citizens of a jurisdiction with respect to which Congress has carefully fashioned an intricate series of rights and relationships.

The denial of procedural due process in this matter, which clearly impacts relationships involving citizens of a jurisdiction with which Congress has carefully established a particular relationship, can and should be redressed by the grant of certiorari in this case.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decisions of the New Jersey courts below.

Respectfully submitted,

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